

Plaintiff Eric Gunther, individually and on behalf of all others similarly situated (“Plaintiff”) and Defendant Capital One, N.A., d/b/a Capital One Bank (“CONA”) hereby move the Court for Preliminary Approval of the attached Class Action Settlement Agreement (“Settlement Agreement”). Plaintiff and Defendant believe the proposed Settlement is fair, reasonable and adequate, and that the Court should therefore enter an Order substantially in the form of Exhibit A to the Settlement Agreement. That proposed order, among other things: (1) incorporates the terms of the Settlement Agreement; (2) approves Plaintiff’s counsel as class counsel for the Settlement Class; (3) grants Preliminary Approval of the Settlement Agreement; (4) stays all ongoing and future discovery in the Lawsuit; (5) enjoins any further actions by or on behalf of Settlement Class Members relating to the subject matter of the Settlement Agreement; (6) approves the form and content of the Notice Package and the plan for distribution of the Notice Package as consistent with the requirements of Fed. R. Civ. P. 23 and due process, and directs that the Notice Package be distributed to the Settlement Class Members; (7) sets

procedures for the submission of objections by Settlement Class Members; and (8) sets a Fairness Hearing to consider whether the Settlement should be given Final Approval.

Dated: July 2, 2010

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